STATE OF ARIZONA
OFFICE OF ADMINISTRATIVE HEARINGS

██████, a Student, by and through Parent ██ ██.,	No. 09C-DP-09017-ADE
Petitioners,	**ADMINISTRATIVE LAW JUDGE DECISION**
-v-	
Coolidge Unified School District No. 21,	(Dismissing Due Process Complaint)
Respondent.	

Parent ██████ filed a request for due process hearing (hereinafter "complaint") with the Respondent School District on September 24, 2008. The complaint requests a due process hearing under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"), found at 20 U.S.C. §§ 1400-1482.[1] The Arizona Department of Education issued a Notice of Hearing on September 26, 2008. Respondent School District submitted an untimely response to the complaint on November 19, 2008.

Parent's complaint alleges violations concerning Respondent School District's compliance with an order from the Arizona Department of Education ("Department") upon consideration of a "state complaint" made by Parent. That state complaint was filed August 29, 2007. On September 15, 2007, Parent withdrew Student from Respondent School District and placed Student in a charter school. The "state complaint" process resulted in an order that Respondent School District convene the IEP team and consider whether Student had been eligible for Extended School Year services during the 2007 summer and, if so, whether compensatory education should be given to Student. After several IEP team meetings and clarification letters from the Department, the Department declared the matter completed and closed the state complaint on March 21, 2008. Student has remained in the charter school.

As noted, Parent filed the due process complaint in September 2008. The complaint claims procedural violations during the months between October 2007 and March 2008, while the IEP team was meeting and making its decisions under the

---

[1] This is the 2004 re-authorization and amendments to the IDEA, effective July 1, 2005.

direction and supervision of the Department through its corrective action order. The due process complaint does not allege any improprieties with Student's IEP or with regard to the education or services that Student received from Respondent School District.

On November 21, 2008, Respondent School District filed a Motion to Dismiss Due Process Complaint, arguing that this tribunal does not have authority to hear the claims made in the due process complaint. A telephonic prehearing conference was also held that day and the parties agreed to brief the dismissal motion and postpone the hearing date until a ruling on the motion was issued. Parent filed a response to the motion on December 11, 2008. Respondent School District filed a reply on December 17, 2008. This tribunal has carefully considered both the arguments of the parties. The issue is whether or not the complaint states a dispute appropriate for adjudication under the IDEA. This tribunal finds that it does not, and therefore, dismisses the complaint because it does not state a claim under the IDEA.

Under the IDEA, children with disabilities and their parents/guardians are entitled to bring due process hearing requests "with respect to any matter relating to the *identification, evaluation, or educational placement* of the child, or *the provision of a free appropriate public education* to such child. . . ."[2] A free appropriate public education is one that is provided at public expense under public supervision, meets the State's educational standards, includes appropriate education, and is provided in conformity with an IEP specific to the child.[3]

This tribunal finds that Parent's due process complaint is essentially an appeal of the Department's state complaint decision and a complaint about how Respondent School District complied, or failed to comply, with it. As such, it is not a claim under the IDEA and this tribunal has no authority to hold an IDEA due process hearing on those issues.[4]

In summary, Parent's complaint does not relate to Student's identification, evaluation, or educational placement under the IDEA, nor does it relate to a free

---

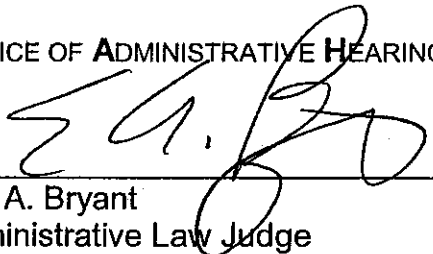[2] 20 U.S.C. § 1415(b)(6)(A) (emphasis added)
[3] 20 U.S.C. § 1401(9).
[4] Respondent School District's motion and reply spell out the specific reasons for this in great detail.

2

appropriate public education for Student. Indeed, because Student was not enrolled in Respondent School District during the time relevant to the complaint, Respondent School District had no obligation to provide FAPE to Student. Therefore, this tribunal has no authority to hear Parent's complaint.

IT IS HEREBY ORDERED that Parent's due process complaint is **dismissed**.

Done this 8th day of January 2009.

OFFICE OF ADMINISTRATIVE HEARINGS

Eric A. Bryant
Administrative Law Judge

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this Decision and Order is the final decision at the administrative level. Furthermore, any party aggrieved by the findings and decisions made herein has the right to bring a civil action, with respect to the complaint presented, in any State court of competent jurisdiction or in a district court of the United States. Any action for judicial review must be filed within 90 days of the date of the Decision or, if the State has an explicit time limitation for bringing this type of action, in such time as the State law allows.

Copy sent by **electronic mail** this 9 day of January 2009.
and mailed by certified mail (No. _____ 7008 2810 0000 0750 5014
this 9 day of January 2009, to:

3

Copy sent by **electronic mail** this .9 day of January 2009
and mailed by certified mail (Nc   7008 2810 0000 0750 5021
this _9_ day of January 2009, to:

Matthew L. White
UDALL, SHUMWAY & LYONS, P.L.C.
30 West First Street
Mesa, AZ 85201-6695
Attorneys for Respondent School District
mlw@udallshumway.com

Copy mailed by interdepartmental mail this _9_ day of January 2009, to:

Colette Chapman, Exceptional Student Services
Arizona Department of Education
ATTN: Kacey Gregson
1535 West Jefferson
Phoenix, AZ 85007

By _Chris Fishledr_